IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DUBUQUE DIVISION

JAMES SEITZ, Plaintiff, vs. METROPOLITAN LIFE INSURANCE COMPANY and MERCK & CO., INC. LONG TERM DISABILITY PROGRAM FOR NON-UNION EMPLOYEES, Defendants.	No. C 04-1003 LRR **ORDER** *NOT TO BE PUBLISHED*

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In this case, Plaintiff James Seitz ("Seitz") challenges the denial of benefits under a Long Term Disability Program for Non-Union Employees (the "Plan") sponsored by his employer, Merck & Co., Inc. ("Merck"), and administered by Defendant Metropolitan Life Insurance Company ("MetLife"). The specific matters before the court are the Motion for Summary Judgment filed by MetLife and the Plan (docket no. 36) and the Motion for Summary Judgment filed by Seitz (docket no. 38).

I. PROCEDURAL BACKGROUND

On February 5, 2003, Seitz filed his Complaint in the United States District Court for the Northern District of Illinois against MetLife. Seitz invokes the jurisdiction of the federal courts pursuant to 28 U.S.C. § 1331 because his claim for benefits arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), and in particular, 29 U.S.C. § 1132(e)(1) and (f). Seitz claims MetLife's determination he was not entitled to long-term disability ("LTD") benefits under the Plan was inconsistent with the terms of the Plan and MetLife failed to inform Seitz of its decision within 45 days as provided for by rule. MetLife filed motions to dismiss on March 19 and March 28, 2003, contending venue was inappropriate in that district. On April 22, 2003, Seitz filed his First Amended Complaint, which named the Plan as the sole defendant. On May 13, 2003, Seitz filed his Second Amended Complaint, which named as defendants both MetLife and the Plan (together, "Defendants"). On December 22, 2003, the Hon. Robert W. Gettleman, United States District Court Judge for the Northern District of Illinois, entered an Order denying MetLife's motions to dismiss and transferring the case to this district.

On July 1, 2004, Defendants filed their Motion for Summary Judgment, contending they are entitled to judgment as a matter of law because, under the relevant terms of the long-term disability policy, Seitz is not eligible for disability benefits and the denial of benefits was correct under the abuse of discretion standard of review.

Also on July 1, 2004, Seitz filed his Motion for Summary Judgment, contending he is entitled to judgment as a matter of law because his disability was supported by uncontested medical evidence, every doctor who examined him or reviewed the medical evidence indicated he was disabled from his own occupation, no evidence exists that supports MetLife's decision to deny his claim for LTD benefits, and MetLife breached its fiduciary duty to Seitz by unreasonably denying Seitz's claim for LTD benefits.

On July 26, 2004, Defendants resisted Seitz's Motion for Summary Judgment. On August 4, Seitz resisted Defendants' Motion for Summary Judgment. On August 12, 2004, Defendants filed a reply to Seitz's resistance. On March 18, 2005, the court held oral argument on the motions. Attorney Mark DeBofsky appeared on behalf of Seitz. Attorney J Helton represented Defendants. Finding the motions for summary judgment to be fully submitted, the court turns to address their merits.

II. FACTUAL BACKGROUND

Seitz is a participant in an ERISA-governed employee benefit plan offered by Merck, Seitz's former employer, and administered by MetLife. Merck is a global research driven pharmaceutical products company. Seitz was a senior professional representative for field sales of pharmaceuticals at Merck. MetLife is a mutual insurance company.

A. Relevant Provisions Of The Plan

The Plan is offered to Merck employees to provide them with employment benefits including LTD benefits. Merck is the Plan Administrator, responsible for administering the Plan, and MetLife is the Claims Administrator of the Plan, responsible for processing

all claims and appeals. The Plan is described in the Summary Plan Description ("SPD"). The SPD contains two separate sections describing the authority of the Plan Administrator and the Claims Administrator. The SPD states Merck, as the Plan Administrator, has the exclusive discretionary authority to:

- Construe and interpret the provisions of the LTD Plan;
- Make factual determinations;
- Decide all questions of eligibility for benefits;
- Determine the amount of such benefits;
- Resolve issues arising in the administration, interpretation, and/or application of the LTD Plan;
- Correct any defects;
- Reconcile any inconsistencies; and
- Supply any omissions with respect to the LTD Plan.

> Its decisions on such matters are final and conclusive. Merck & Co., Inc., as plan administrator, has reserved the right to delegate all or any portion of its discretionary authority described in the preceding sentence to a representative (e.g., claims administrator) and such representative's decisions on such matters are final and conclusive. Any interpretations or determinations made pursuant to such discretionary authority of the plan administrator or its representative will be upheld in judicial review unless it is shown that the interpretation or determination was an abuse of discretion.

Joint Appendix ("J.A.") p. 15. The Administrative Services Agreement between Merck and MetLife provides in pertinent part as follows:

> **A. Disability Benefits:** With respect to disability benefits Claim processing:
> **1. Delegation of Authority:** Customer[1], Plan Administrator and MetLife acknowledge that Customer and Plan

[1] The "Customer" is Merck and its agents authorized to act on Merck's behalf with respect to the Plan or the Administrative Services Agreement. J.A. p. 32.

> Administrator have delegated to MetLife and MetLife has agreed to assume responsibility and discretionary authority for determining eligibility for disability benefits and for construing Plan terms subject to review by the Named ERISA Claim Review Fiduciary.[2]
>
> **2. Initial Claim Evaluation:** MetLife will conduct an initial evaluation of Claims to determine whether disability benefits are payable. When deemed appropriate by MetLife, Claims evaluation will include review by medical professionals employed or retained by MetLife.
>
> **3. Determination of Benefits:** MetLife will compute and verify disability benefits amounts and prepare and provide to Participants,[3] when appropriate, statements reflecting the amount of disability benefits payable and the reasons, as required under ERISA, why a Claim for disability benefits has been denied in whole or in part.

J.A. p. 36. The SPD provides that a person is eligible for LTD benefits after that person has been "totally disabled" for the duration of the eligibility period. "Totally disabled" is defined in the SPD as follows:

> Totally disabled means you are unable to perform all material aspects of your occupation during the Eligibility Period and during the first 24 consecutive months that benefits are paid under the Long-Term Disability Plan. After the first 24 consecutive months of disability, you must be unable to engage

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[2] The "Named ERISA Claim Review Fiduciary" is the "individual or entity designated by the Plan Administrator as the fiduciary charged with the discretionary authority for determining eligibility for Plan Benefits and for interpretation of Plan terms in connection with the full and fair review of Claims which have been denied in whole or in part, which review is required under ERISA Section 503." J.A. p. 32. Pursuant to the Administrative Services Agreement, MetLife is the Named ERISA Claim Review Fiduciary. J.A. p. 37.

[3] The "Participants" are Merck's current employees who are eligible and enrolled for coverage under the terms of the Plan. J.A. p. 32.

> in any Gainful Employment for which you are or may become reasonably qualified by education, training or experience.
>
> You must be under the regular care of a licensed doctor to be considered totally disabled. The doctor must also have appropriate expertise for your disability and you must follow the prescribed course of treatment. For example, it is not normal and appropriate for a general practitioner to treat depression. You cannot receive any compensation or profit for any work performed (including from entities other than Merck) and regardless of whether you otherwise would meet the definition of total disability. However, you can do rehabilitative work that is approved by the Claims Administrator. For more information, see Rehabilitative Employment.

J.A. p. 29. The SPD states the Eligibility Period is "[a] consecutive 26-week period for which you have been continuously totally disabled." J.A. p. 26. The SPD provides for an administrative review of a decision denying a claim for LTD benefits:

> If you receive notice that your [LTD benefits] claim has been denied (in full or in part) and you disagree with the decision, you are entitled to apply for a full and fair review of the claim and the adverse benefit determination. You (or your appointed representative) can appeal and request a claim review within 180 days after you have received the denial notice. . . . The review will be conducted by the claims administrator or other appropriate named fiduciary of the plan who is neither:
>
> - The individual who made the adverse benefit determination which is the subject of the review, nor
> - The subordinate of such individual (including any physicians involved in making the decision on your appeal if medical judgement is involved).
>
> If the initial denial is based in whole or in part on a medical judgement, MetLife will consult with a health care professional with appropriate training and experience in the field of

> medicine involved in the medical judgement. This health care professional will not have consulted on the initial determination, and will not be a subordinate of any person who was consulted on the initial determination.
>
> No deference will be given to the initial adverse benefits determination. You will have the opportunity to submit written comments, documents, records, and other information relating to the claim and you shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to your claim for benefits. Whether a document, record or other information is relevant to your claim shall be determined in accordance with the applicable U.S. Department of Labor (DOL) regulations. The review will take into account all comments, documents, records and other information submitted by you relating to the claim without regard to whether such information was submitted or considered in the initial benefit determination.
>
> The Claims Administrator shall notify you of the plan's benefit determination on review within a reasonable period of time, but not later than forty-five (45) days after the receipt of your request for review, unless special circumstances, such as the need to hold a hearing, require an extension of time for processing the claim. If an extension of time is required, the initial 45-day period may be extended one time by up to 45 days provided the claims administrator or its delegate notifies you within the initial period of the special circumstances requiring the extension and the date by which the plan expects to render the determination on review.

J.A. pp. 24-25.

B. Medical Evidence

Prior to the onset of his symptoms in 2000, Seitz had an anterior cervical discectomy and fusion at C6-C7. In 2000, Seitz's chief complaint was headaches. J.A.

p. 93. On August 17, 2000, Seitz underwent two magnetic resonance imaging ("MRI") procedures - one of the cervical spine and the other of the brain. The results of the brain MRI were normal. The results of the cervical spine MRI were interpreted by Patrick R. Sterrett, M.D., a board certified neurologist, to show the following:

> 1. Minor degenerative disc[4] disease at C5-C6.
> 2. Incomplete fusion at C6-C7.
> 3. Significant osteophytic or spondylotic ridging of the end plate posteriorly at C5-C6 obliterating the subarachnoid space on the left and also compressing on the ventral cord central and to the left at C5-C6 pushing the cord posteriorly. This results in mild to moderate spinal stenosis at this level and also appears to compromise the neural foramina slightly on the left.
> 4. Broad-based spondylotic or osteophytic ridging of the end plates of C4-C5 which partially obliterates the subarachnoid space between the posterior longitudinal ligament and the ventral cord at C4-C5 but also appears to cause compression of the cord and displaces the cord slightly posteriorly. This appears to be much more pronounced at C5-C6 than at C4-C5.
> 5. No enhancing lesions are identified with contrast of the cervical cord, upper thoracic cord or the extramedullary structures at the cervical and upper thoracic regions.

J.A. pp. 93-94.

On October 12, 2000, an x-ray examination showed small anterior and posterior marginal vertebral osteophytes from C4 through C6. The examination also showed small bilateral uncinate spurs at C5 and C6. There was no evidence of instability. J.A. p. 98. Also on October 12, 2000, Seitz was examined by Dr. Charles R. Clark, an orthopedist at the University of Iowa Hospitals and Clinics. Seitz complained of headaches and

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[4] The court notes some records use the spelling "disc" while others use the spelling "disk." Because the court will be quoting records with both spellings, the court will employ the spelling used in the relevant record, which will result in inconsistency.

tension in the back of his neck. Dr. Clark's impression on examination was "cervical spondylosis with stenosis with cord effacement with no evidence of myelopathy on clinical exam." J.A. p. 100.

On April 2, 2001, Dr. Ernest M. Found, another orthopedist at the University of Iowa Hospitals and Clinics, wrote a letter on Seitz's behalf.[5] Dr. Found indicated Seitz continued to suffer from chronic upper back and neck pain and headaches following multiple surgical procedures on his cervical spine. Dr. Found stated, "[a]s we have reviewed with you before, he is permanently restricted to only short term sitting and is limited to only very occasional reaching, lifting and any overhead work. This restriction includes driving for lengthily [sic] periods." J.A. p. 99. Dr. Found noted Seitz continued to be treated for anxiety and depression. Dr. Found opined, "return to a very high paced, demanding, competitive situation is not in his best interests either mentally or physically." J.A. p. 99. Dr. Found indicated he planned to "follow Mr. Seitz on a regular basis" and Dr. Found was "going to schedule a twelve month regular return, but . . . would be happy to see him at any time at his request." J.A. p. 99.

On May 18, 2001, Dr. Kishore Thampy, a psychiatrist, completed a depression questionnaire in connection with Seitz's claim for Social Security benefits. Dr. Thampy reported Seitz suffered from depression characterized by loss of interest in most activities, psychomotor agitation or retardation, decreased energy, feelings of guilt or worthlessness, and difficulty concentrating or thinking. Dr. Thampy also noted Seitz had marked restrictions in daily living activities, social functioning, and concentration, persistence and pace. Dr. Thampy found Seitz was able to understand, carry out, and remember simple instructions. However, he found Seitz was unable to respond appropriately on a sustained

[5] The letter is addressed "To Whom It May Concern," so the court cannot discern to whom the letter was sent.

basis to co-workers and usual work situations and was unable to deal with changes in a routine work setting. J.A. pp. 101-04.

On August 8, 2001, Dr. Found wrote another letter on Seitz's behalf.[6] Dr. Found reiterated Seitz's medical problems were severe chronic pain and significant anxiety and depression secondary to the pain. Dr. Found wrote, "[t]he restrictions that we have placed upon him [as set forth in Dr. Found's April 2, 2001 letter] are reasonable considering his pain levels, the current findings in terms of his neck pathology and information that is available to us regarding his anxiety and depression." J.A. p. 97.

On August 9, 2001, Seitz underwent another MRI exam of the cervical spine. The results as interpreted by Robert Merrick, M.D., were as follows:

> 1. High grade spinal stenosis at C5-6, greater on the left than the right. No significant residual CSF space. There is deformity of the cervical cord. The findings show progression since August of 2000.
> 2. Moderate herniated disk at C4-5 with slight compression of the cord, slight progression of the stenosis since August of 2000.
> 3. Previous fusion at C6-7.

J.A. p. 129. X-rays were also taken on August 9, 2001. An examination of the x-rays showed "[d]isk space narrowing and degenerative change at C4-5 and C5-6" and "moderately large uncinate spurs at these levels on the right." J.A. p. 117.

On August 25, 2001, Dr. Sterrett wrote a letter to Seitz. Dr. Sterrett wrote, in pertinent part, the following:

> This is in regard to your letter dated 08/24/01 to Kathy, my receptionist. This is to verify that we did talk about the fact that you do have a severe spinal stenosis at C5-6 and that my recommendation would be surgery. I also did mention to you

[6] The letter is addressed "To Whom It May Concern."

> that the spinal stenosis does appear to be progressive from your previous MRI a year ago in terms of the degree of stenosis. However, it is important to understand that I did not put you on restrictions as a sales representative. This was done, as you told me, by the physicians, Dr. Found and Dr. Clark from the University of Iowa Hospital and Clinics. I had nothing to do with the work restrictions initially. I did mention to you that as a sales representative for a pharmaceutical company, that you should not return to work since there is significant travel involved which could aggravate the condition. However, if you had a desk job where there was no driving, I think that would be acceptable. I do agree that you should not be driving daily with your condition.

J.A. p. 96.

On September 26, 2001, Dr. Found completed an Attending Physician's Statement (the "September 26, 2001 Statement") on Seitz's behalf. Dr. Found diagnosed Seitz with "HNP Cervical Spine, HNP Lumbar spine, Anxiety, Depression, Chronic Neck, upper back, headache pain." J.A. p. 78. Dr. Found's treatment plan was the following: "[r]estrictions, limitation of function, [c]hronic [p]ain management exercise, [and] coping skills." J.A. p. 78. Dr. Found released Seitz to do light work[7] with the following permanent restrictions: sitting, standing, walking, bending, climbing, crawling, reaching, kneeling, squatting, twisting, pushing/pulling, grasping, and driving "occasionally," which is defined as two hours per day. Furthermore, Dr. Found indicated Seitz was capable of carrying 0-10 pounds two hours per day, lifting 11-25 pounds one hour per day, and lifting and lowering from floor to waist, waist to shoulder, and over the shoulder occasionally. J.A. p. 79.

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[7] The September 26, 2001 Statement defines "light work" as "20 lbs. maximum lifting. Frequent carrying of up to 10 lbs. Occasional walking and/or standing." J.A. p. 79.

On January 29, 2002, Dr. Found and Ted Wernimont, Director of Rehabilitation at the University of Iowa Hospitals and Clinics, wrote a letter[8] which stated they previously had found Seitz to be in a Class III Moderate Limitation of functional capacity, capable of doing only light work due to the chronic neck, upper back and lower back pain. Dr. Found and Mr. Wernimont stated they saw a slight mental limitation secondary to depression. Seitz was able to function in most stressful situations and engage in interpersonal relationships, but Seitz's job involved what Seitz described to them as extremely high stress situations. The letter reiterated Seitz's work capabilities and restrictions:

> What [Seitz] "can do" is sit for approximately 2 hours per day, but not without periods every 25 minutes to stand, move around, change position and so [sic] some specific stretching. He is able to walk two hours per day with breaks every 30 minutes to rest, change position and stretch. He is able to stand two hours per day, but again, every half hour he must be able to change position, move around and do some very specific stretching. He is able to lift up to 20 pounds but absolute proper body mechanics must be employed. He is not able to do any overhead lifting. He can kneel, crawl, climb, balance and reach occasionally up to two hours per day. He is able to work under specific deadlines, less than two hours per day.

J.A. p. 68. The letter also indicated, "[w]e continue to feel that his plan to move on to a different job situation that involves much less prolonged sitting, driving and significant stress is absolutely in Mr. Seitz' best interest." J.A. p. 69.

On January 31, 2002, Seitz had an x-ray examination of his lumbar spine. The x-ray showed a partial sacralization of the L5 vertebral body with apparent pseudoarthroses

[8] The letter is addressed "To Whom It May Concern."

between the transverse processes and the remainder of the sacrum. The x-ray also showed significant disc space narrowing at L4-L5 with vacuum phenomenon and mild disc space narrowing at L3-L4. Also seen was facet sclerosis at L4-L5. The x-ray indicated the remainder of the discs were well-maintained. The reviewing doctor's impression was degenerative disc disease, primarily at the L4-L5 level and, to a lesser extent, at the L3-L4 level. J.A. p. 118.

Also on January 31, 2002, Seitz was examined by Dr. Found. Dr. Found's notes indicate Seitz told him he suffered from pain and numbness in the left hip and buttock down the posterior thigh to the foot. Dr. Found also ordered and studied the x-rays taken the same day. Under the "Plan" portion of Dr. Found's notes from the January 31, 2002 appointment, Dr. Found wrote the following:

> Jim has been contemplating at length his working situation and feels and realizes that it is unlikely he will be able to tolerate the prolonged sitting activities and those activities that he has been instructed to participate in. He remains contemplative of his future. We discussed at length the extensive communication that has been presented to his current employer. We would not intervene in any active way at the present time in terms of his medical care and we will see him back as we need to.

J.A. p. 66.

On February 8, 2002, Dr. Found wrote a letter to Mary Beth Desautels at Merck. Dr. Found described a significant flare up of Seitz's symptoms resulting from a long period of sitting on January 28, 2002 at a training session symposium. J.A. p. 67. Specifically, Dr. Found stated Seitz noticed increased symptoms of leg pain and foot numbness. J.A. p. 67. Dr. Found indicated evidence of progression of the degenerative changes from 1999 until the most recent MRI in August 2001 but the progression was not yet a surgical issue. J.A. p. 67.

On June 18, 2002, Dr. Philip Weinstein of the University of California at San Francisco Department of Neurological Surgery saw Seitz for a neurosurgical consultation. Dr. Weinstein listed Seitz's medical complaints and history relating to his neck and low back before briefly stating, "Mr. Seitz remains disabled from a previous occupation as a pharmaceutical salesperson. The neurologic review was otherwise negative." J.A. p. 120. Dr. Weinstein further indicated, "[t]here is no evidence of progressive neurological deficit, however, imaging studies should be updated." J.A. p. 121. Dr. Weinstein requested a cervical and lumbar spine MRI examination and waited to make any recommendations regarding management of Seitz's condition until the MRI scans were complete. J.A. p. 121.

Seitz saw Dr. Thampy on June 13, 2002. On July 5, 2002, Dr. Thampy completed a second depression questionnaire in connection with Seitz's claim for Social Security benefits. Dr. Thampy reported that Seitz suffered from depression characterized by sleep disturbance, psychomotor agitation or retardation, decreased energy, feelings of guilt or worthlessness, difficulty concentrating or thinking, and infrequent thoughts of suicide. Dr. Thampy also noted Seitz had marked restrictions in daily living activities, social functioning, and concentration, persistence and pace. Dr. Thampy further stated Seitz suffered from four or more episodes of decompensation, each of extended duration, in work or work-like settings which caused him to withdraw from that situation or to experience exacerbation of his psychological symptoms. Dr. Thampy found Seitz was able to understand, carry out, and remember simple instructions and was able to respond appropriately on a sustained basis to supervision and co-workers. However, he found Seitz was unable to respond appropriately on a sustained basis to usual work situations and was unable to deal with changes in a routine work setting. J.A. pp. 105-08.

On August 26, 2002, Seitz underwent x-rays and MRI examinations of his lumbar

and cervical spine. The lumbar x-ray showed four lumbar segments with transitional first sacral segment and laminectomy changes on the left at L4. J.A. p. 134. The lumbar x-ray also showed degenerative and possible postoperative vacuum disk change at L4-transitional S1. J.A. p. 134. The cervical x-ray was compared to the August 9, 2001 cervical x-ray to look for any changes. The August 26, 2002 cervical x-ray showed mild degenerative changes at C4-C5 and C5-C6 with stable postoperative changes at C6-C7. The doctor interpreting the x-ray noted, "[w]hen compared with August 9, 2001, there is no significant interval change." J.A. p. 123. The lumbar MRI was compared to the lumbar x-rays taken the same date. The lumbar MRI indicated the following:

> 1. Transitional S1 with four discrete lumbar segments.
> 2. Postoperative laminectomy changes on the left at L4-5. Mild left lateral recess stenosis at 4-5 secondary to facet arthrosis and minor disk bulging. No evidence for recurrent disk herniation at 4-5 or evidence for significant perineural scarring.
> 3. Postoperative laminectomy changes on the left at 3-4 with mild recurrent left lateral degenerative disk bulging and left lateral recess stenosis at 3-4 secondary to facet arthrosis and recurrent disk bulging.
> 4. Minor degenerative lateral disk bulging at 2-3.

J.A. p. 127. The cervical MRI conducted on August 26, 2002 was compared with the cervical MRI performed on August 9, 2001. The August 26, 2002 cervical MRI showed the following:

> 1. There is degenerative spondylosis with disk narrowing and a large hypertrophic spur on the left at C5-6 with resultant spinal stenosis and foraminal narrowing. These findings have remained essentially unchanged when compared with August 9, 2001.
> 2. There is a minor left paracentral degenerative disk bulge at L4-5 associated with marginal spurring and some mild uncinate spurring on the left at L4-5. This has remained

> essentially unchanged when compared with the previous study. The remainder of the exam is normal.
> 3. There are no findings of abnormal gadolinium enhancement.

J.A. p. 125.

On October 14, 2002, Seitz was evaluated by Dr. E. Richard Blonsky, Neurology and Pain Medicine Director of The Pain and Rehabilitation Clinic of Chicago, at the request of Seitz's counsel. On October 25, 2002, Dr. Blonsky wrote a letter to Seitz's attorney regarding the evaluation. Specifically, Dr. Blonsky noted he performed a comprehensive neurologic and musculoskeletal examination, received a detailed history from Seitz, and was provided with x-rays and numerous records and reports of diagnostic studies. Dr. Blonsky stated, "Mr. Seitz stated that he has been attempting to find job postings within the Merck corporate structure in an office position where he can alternate sitting and standing. He has submitted several applications, but has not been accepted in another job. He stated that the field sales group cannot accommodate his restrictions." J.A. p. 148. Dr. Blonsky further noted the following:

> More significant, however, is the fact that Mr. Seitz' physical condition prohibits him from performing the activities of his job. Although a job description is provided, it only addresses the types of activities required of a professional representative, but does not address the physical or cognitive requirements of the job. Nowhere does the job description address the weight of the sample cases and other equipment that a representative is required to carry. Nowhere does it address the amount of driving required by a representative. Nowhere does it address the number of calls a representative is to make in the course of a day, or any other similar issues. In other words, this job description is of no value whatsoever in determining what is required for an individual to successfully perform the activities of the job.
>
> Mr. Seitz has been evaluated over a long period of time by a

very competent orthopedic surgeon, Dr. Found, who consistently reported his recommendations in terms of restrictions imposed upon Mr. Seitz. In order to meet these restrictions, Mr. Seitz is not capable of performing the duties of a pharmaceutical representative and the employer seemingly has chosen not to accommodate him.

The issue is not one of Mr. Seitz' employability: the question is his ability to perform "all material aspects of your occupation." Mr. Seitz cannot do that.

He could work in a sedentary position where he could alternate sitting and standing and where his work site was appropriately set up so that a computer monitor was at eye level, which would enable him to keep his neck in a neutral position and avoid excessive flexion or extension. He would require an ergonomic chair which would provide lumbar support, high back support, as well as accommodate his height. These are not costly modifications.

The fact that an individual does not take pain medications does not mean he does not experience pain. The fact that an individual does not consult a physician on a monthly or quarterly basis, does not mean that he does not have impairment. Participation in a chronic pain management program teaches an individual to effectively cope with the pain and to get on with the business of living. Mr. Seitz has been through such a program and is carrying out an appropriate course of action. Avoidance of the use of the healthcare system as well as excessive medications is one of the prominent goals of such programs.

Based on my independent review of the medical records and diagnostic studies, as well as my interview of Mr. Seitz and examination of him, I am of the opinion that he is impaired sufficiently from a musculoskeletal perspective that he is unable to perform the activities of his job. By definition, he

> is totally disabled at least for his own occupation. He is actively seeking work within the framework of his restrictions. I am convinced that if such a job became available, he would immediately take it and withdraw from disability status.

J.A. pp. 151-52.

C. LTD Benefits Claims Application

January 28, 2002 was Seitz's last day working for Merck. J.A. p. 38. His eligibility period for LTD benefits, the 26-week period during which he must have been continuously totally disabled, lasted from January 29, 2002 through July 30, 2002. J.A. p. 42.

On May 24, 2002, Candace Hodge, a business manager with Merck, completed at MetLife's request a job description worksheet for a senior professional sales representative, the position Seitz held at Merck. J.A. p. 131. Hodge indicated the job of a senior professional sales representative requires 5-6 hours of sitting per day and 1-2 hours per day of standing, walking, bending over, twisting, reaching above shoulder level, crouching/stooping, kneeling, balancing, and pushing or pulling. Hodge further stated in a normal day, a senior professional sales representative would repetitively use his or her right foot and both hands in driving for 5-6 hours. Hodge indicated a senior professional sales representative would grasp with both hands for 5-6 hours per day, require fine finger dexterity of both hands 1-2 hours per day, and hold the head and neck in a static position, twist the head and neck, and look up and down 1-2 hours per day. Hodge also stated the position requires lifting or carrying up to 10 pounds "continually"[9] and lifting or carrying

[9] "Continually" is defined as 67-100% of the time. J.A. p. 131.

11-50 pounds "occasionally."[10] Hodge indicated the job requires continual interpersonal relationships necessary to perform the job and continual stressful situations necessary to perform the job. In the course of performing the job of a senior professional sales representative, Hodge indicated a person must drive, be exposed to marked changes in temperature or humidity, and perform overtime work on a routine basis. Hodge indicated on the Employer Statement that Seitz's job could be modified to accommodate Seitz's restrictions by being part-time and/or being part of a job share program. Hodge stated Seitz did not discuss with her the possibility of returning to work.

Hodge attached to the form a copy of the Exempt Position Description of a professional representative in field sales. The position description reads as follows:

> MAJOR ACCOUNTABILITY:
> The Professional Representative represents Merck Sharp & Dohme [("MSD")] on an assigned territory* in a complex and dynamic professional and business environment. The primary responsibility of the Professional Representative is to communicate effectively with physicians, paramedical and administrative persons, either singly or in groups, who influence the use of MSD products. These communications require the effective selection and use of a variety of support systems to accurately convey technical and economic information so MSD products will be prescribed when indicated.
> *Territory assignments are by product group specialists, and to either a regular, hospital, HMO or military territory.
>
> NATURE AND SCOPE OF POSITION:
> 1. Under close supervision of a District Manager:
> 2. Calls regularly on appropriate physicians within an assigned territory for the primary purpose of maintaining or increasing the use of MSD products

[10] "Occasionally" is defined as 1-33% of the time. J.A. p. 131.

within the claim structure as defined in the package circular. Also calls on appropriate paramedical and administrative persons as necessary to assure that our products are available for use by prescribing physician.

3. Communicates with selected medical, paramedical and administrative persons, either singly or in groups, in a manner that encourages the use of MSD products where indicated. In doing so, promotes a drug only for approved claims; gives a balanced presentation of both benefits and risks; informs these persons fully on contraindications, side effects and precautions; uses precise and accurate language, in both oral and written communications; provides only that product information approved by the company for communication to physicians.
4. Selects and utilizes the appropriate resource or resources from a wide variety of support systems and employs them in a manner that enhances the communications process.
5. Keeps informed regarding situations and events that occur in the territory that may impact on the utilization of MSD products and the efforts of the Professional Representative so that appropriate action can be taken.
6. Plans and organizes activities within the territory based on analysis of opportunities and measurement documents. Implements action plans in a manner that assures time and effort are properly utilized to maximize effectiveness on territory.
7. Regularly updates product knowledge in order to maintain the high level of technical competence required for the successful execution of assigned responsibilities.
8. Complies with the letter and spirit of all laws and regulations and Company policies relating to all responsibilities.
9. Conducts self in a professional manner consistent with the Professional Representative's responsibility to the

public, the health professions and the Company.

J.A. pp. 132-33.

On May 29, 2002, Seitz filed a claim for LTD benefits with MetLife. Seitz indicated on the claim form that he had applied for Social Security disability benefits and was already receiving short-term disability benefits. On the LTD Claim Form Employee Statement and on the Personal Profile, Seitz listed Dr. Found as his "spine" or "orthopedic" physician/provider and Dr. Thampy as his provider for treatment of "depression" or "psychiatry." Seitz submitted the following documentation in support of his LTD benefits claim: (1) Dr. Found's Attending Physician Statement dated May 29, 2002 (the "May 29, 2002 Statement"); (2) cervical spine x-ray report dated October 12, 2000; (3) cervical spine MRI report dated August 24, 2001; (4) cervical spine x-ray report dated August 24, 2001; (5) lumbar spine x-ray report dated January 31, 2002. J.A. p. 43. MetLife also obtained Dr. Found's notes from Seitz's office visit on January 31, 2002. J.A. p. 43. The May 29, 2002 Statement indicated a primary diagnosis of cervical stenosis, a secondary diagnosis of chronic pain in his lower back with radicular pain in his arms and legs and headaches, and a tertiary diagnosis of depression. The records also indicated that Seitz had two prior spine surgeries and his symptoms had increased in the past two years. The May 29, 2002 Statement also contained Seitz's permanent restrictions: a 50-pound weight limit, no overhead lifting, and no climbing. The May 29, 2002 Statement listed additional restrictions, including driving only one to two hours per day, no repetitive bending, stooping or reaching, and no "regular high stress." The May 29, 2002 Statement indicated Seitz could sit for two hours per day, stand for three hours per day, and walk for three hours per day. The May 29, 2002 Statement indicated Seitz could work for eight hours per day within these limitations. Additionally, the May 29, 2002

Statement noted Seitz had only slight limitations on his psychological function[11] and generally Seitz was "doing very well!" J.A. p. 57. Seitz also provided to MetLife a January 24, 2002 Physical Capacity Evaluation signed by Dr. Found, which indicated Seitz was capable of "light work" with a 20-pound maximum lifting restriction with occasional walking and/or standing.

Seitz provided to MetLife a Personal Profile statement which he completed on May 29, 2002. J.A. pp. 48-55. The Personal Profile statement indicated that on a daily basis he would read, write, telephone, walk, drive and relax. J.A. p. 49. In the same Personal Profile statement, Seitz indicated he could return to his occupation if he were permitted to sit no more than two hours per day, stand no more than three hours per day, walk intermittently up to three hours per day, and limit driving to one to two hours per day. J.A. p. 50. This information regarding Seitz's abilities tracked other office notes and correspondence supplied by Dr. Found. The records indicated the following: (1) Seitz was not a surgical candidate; (2) his symptoms were exacerbated by overexertion; (3) he was seen and treated by Dr. Found on an "as needed" basis; and (4) he was capable of light work.

MetLife's internal notes regarding Seitz's LTD benefits claim indicate that on July 25, 2002, the nurse consultant hired by MetLife conducted an initial review of Seitz's claim and gave a recommendation as to whether Seitz's claim should be granted or denied. The nurse consultant reviewed the medical documentation Seitz provided and determined, "medical documentation does not support disability. Physical exam within normal limits. No other medical submitted for review." J.A. p. 139. Based on the evidence Seitz presented, the nurse consultant recommended denying his LTD benefits claim. MetLife's

[11] The court notes Dr. Found was not treating Seitz for psychological issues.

notes further indicate on July 26, 2002, MetLife's plan was to "deny [the] claim as no objective medical [evidence was submitted] to support ongoing impairment severe enough to require TX and prevent EE from working." J.A. pp. 139-40.

On August 8, 2002, MetLife wrote to Seitz and informed him it denied his LTD benefits claim "because the medical documentation received does not support your total disability, as defined in the plan, from the date your disability commenced on January 29, 2002." J.A. p. 42. MetLife further stated Seitz's claim was denied "due to lack of medical documentation to substantiate your disability." J.A. p. 43.

MetLife's notes indicate Seitz submitted additional medical evidence to MetLife in support of his claim on August 28, 2002. Specifically, MetLife informed Seitz by letter dated September 12, 2002:

> We have received the following information since your initial denial dated August 8, 2002:
> - Attending Physician Statements dated 9/26/01, 2/11/02, and 5/3/92 by Dr. Found
> - Narrative letter dated 2/8/02 from Dr. Found
> - MRI cervical spine dated 8/9/01
> - MRI cervical spine dated 8/17/00
> - MRI of brain dated 8/17/00
> - Narrative letter dated 8/25/01 from Dr. Sterrett
> - Narrative letter dated 8/8/01 from Dr. Found
> - Narrative letter dated 4/2/01 from Dr. Found
> - Short Term Disability comments from Health Services

J.A. p. 70. In the September 26, 2001 and February 11, 2002 Statements, Dr. Found released Seitz to do light work[12] with the following permanent restrictions: walking, standing, sitting and driving only two hours per day. Also on August 28, 2002, MetLife

[12] The Statement defines "light work" as "20 lbs. maximum lifting. Frequent carrying of up to 10 lbs. Occasional walking and/or standing." J.A. pp. 77, 79.

referred the claim to a nurse consultant to review the claim and make a recommendation on appeal. MetLife's notes state that on August 30, 2002, the nurse consultant reviewed the additional medical evidence and made the following assessment:

> EE's orthopedist has not documented objective physical findings based on physical exam precluding RTW light job class. Dr. Found, ortho, has documented subjective complaints of pain, however, EE documented on PPE that he does not take pain medication or medication for depression. 1/31/02 OVN Dr. Found documented mild impairments and yet we have severe restrictions limitations documented on 1/24/02 which is curious….as the physical capacity evaluation was completed prior to EE's reported exacerbation of radiculopathy as a result of training on 1/28/02. Severe restrictions and limitations are also inconsistent with physical findings.

J.A. p. 141 (ellipses in original). MetLife's notes indicate on September 9, 2002, MetLife called Seitz and advised him the additional medical evidence was received but no appeal was filed. J.A. p. 142. Seitz's attorney appealed the initial determination by letter dated October 3, 2002. J.A. pp. 71-73.

On November 7, 2002, Seitz's attorney sent MetLife a letter in support of Seitz's LTD benefits claim. J.A. pp. 153-55. Counsel noted MetLife's inconsistent actions, i.e., providing counsel for Seitz in relation to his claim for Social Security benefits while at the same time denying his claim for LTD benefits. In addition, Seitz's counsel submitted Dr. Blonsky's October 25, 2002 letter and noted Dr. Blonsky's frequent retention by insurance companies to perform independent medical examinations. Counsel also submitted the reports of Drs. Sterrett, Weinstein and Thampy as well as the findings of the Social Security Administration.

In evaluating Seitz's appeal, MetLife sought an independent review of his claim and informed Seitz of this fact in a letter dated December 16, 2002. On January 21, 2003,

Minochka Taylor of MetLife requested Univall[13] find a physician to conduct an independent medical examination of Seitz.

On January 23, 2003, Univall requested Barry Lipson, M.D., a fellow of the American Academy of Disability Evaluating Physicians, review Seitz's restrictions and assess whether Seitz would be able to perform his own occupation. Further, Dr. Lipson was asked to determine whether the medical documentation on file demonstrated that Seitz was functionally impaired or had functional deficits from January 29, 2002 continuously through July 30, 2002 which would render Seitz unable to perform the material aspects of his own occupation. MetLife provided the materials submitted by Seitz and his physicians to Dr. Lipson. On January 29, 2003, Dr. Lipson wrote a letter to Univall, stating he had reviewed the medical records and reports. Dr. Lipson completely agreed with Dr. Found's findings and limitations. Dr. Lipson also indicated that Seitz's significant degenerative disc disease and laminectomy changes would be expected to result in at least some degree of instability. This instability, combined with Seitz's body "habitus, (6'2", 280#)" would be expected to result in some altered bio-mechanics of the spine. J.A. p. 86. The alteration, along with the pain, "could easily be exacerbated by Mr. Seitz's work activities which would result in functional impairment rendering him incapable of performing the essential duties of his job, as described in the Employee's Job Description form, from 1/29/02 through 6/30/02."[14] J.A. pp. 86-87.

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[13] Although neither party identifies Univall, the court believes, based on its review of the relevant documents in the Joint Appendix, that Univall is a company hired by insurance companies to find physicians to conduct independent medical examinations.

[14] The court assumes Dr. Lipson meant "7/30/02," rather than "6/30/02," as the relevant period about which MetLife asked Dr. Lipson to give an opinion ended on July 30, 2002.

MetLife also provided the material submitted by Seitz and his physicians to Dr. Mark Schroeder, M.D., Diplomate of the American Board of Psychiatry and Neurology. On January 28, 2003, Dr. Schroeder reviewed the medical records and reports. Dr. Schroeder found the following:

> [t]he medical documentation in the file does not support the existence of a severe global objective psychiatric impairment sufficient to preclude [Seitz] from performing the essential duties of his own occupation as a pharmaceutical sales representative during the time period in question. The extensive medical notes do not contain any significant psychiatric information. The office visit notes of Dr. Thampy do not document a psychiatric impairment sufficient to preclude the employee from working. The checklist of 7/5/02 indicates, in Dr. Thampy's opinion, that the employee suffers from significant psychiatric impairment symptoms. However, the rationale for this opinion is not presented in these documents or in the office visit notes described above.

J.A. p. 82.

MetLife informed Seitz of its decision regarding Seitz's appeal in a February 6, 2003 letter. MetLife listed the additional documentation received and reviewed[15] in making its determination: letters from Mr. DeBofsky dated October 3 and November 7, 2002; a letter from Dr. Found dated January 29, 2002; MRI exams and x-rays of Seitz's cervical and lumbar spine dated August 26, 2002; Seitz's Social Security benefits documentation; a Physical Residual Function Capacity Assessment completed by Dr. Sterrett; Seitz's Patient Screening Record from June 18, 2002; a letter from Dr. Weinstein to Dr. Hermann dated June 18, 2002; documentation from Dr. Thampy dated June 18, 2001 and July 5, 2002; a letter from Dr. Blonsky to Mr. DeBofsky dated October 25,

[15] MetLife indicated it also reviewed and considered the medical evidence Seitz previously supplied.

2002; clinical notes from Dr. Clark dated October 12, 2000; Dr. Thampy's office notes from February-August 2001. In addition to the records submitted by Seitz, MetLife also obtained and reviewed a Physician Consultant Review by Dr. Schroeder dated January 28, 2003 and a Physician Consultant Review by Dr. Lipson dated January 29, 2003. J.A. p. 90. After reviewing all of the information provided, MetLife determined that the original determination regarding the LTD benefits should be upheld. Specifically, MetLife wrote in relevant part:

> We do not dispute your client's diagnoses or complaints. However, as indicated in the [P]lan, to be considered totally disabled, a claimant must have continuously been unable to perform all material aspects of his occupation, not necessarily his own job, for 26 weeks. For your client, this period is from January 29, 2002 through July 30, 2002. Dr. Found repeatedly indicated from January 24, 2002 through the [sic] May 29, 2002 that your client was capable of light work with restrictions, and stated that he could work a total of 8 hours as of the Attending Physician Statement dated May 29, 2002. There is no indication throughout the documentation from Dr. Found that Mr. Seitz was informed to cease working as of January 29, 2002. In addition, according to the [P]lan, your client was not under appropriate doctor's regular care and attendance with regard to his reported psychiatric condition.

J.A. pp. 91-92. Seitz was advised he had exhausted his administrative appeals and no further appeals would be considered. MetLife also advised Seitz of his right to file a civil action under ERISA Section 502(a).

III. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate only when the record, viewed in the light most favorable to the nonmoving party, shows there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Carter*

v. Ford Motor Co., 121 F.3d 1146, 1148 (8th Cir. 1997) (citing *Yowell v. Combs*, 89 F.3d 542, 544 (8th Cir. 1996)). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). A fact is material when it is a fact that "might affect the outcome of the suit under the governing law." *Rouse v. Benson*, 193 F.3d 936, 939 (8th Cir. 1999). In considering a motion for summary judgment, a court must view all facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co.*, 475 U.S. at 587. Further, the court must give such party the benefit of all reasonable inferences that can be drawn from the facts. *Id.*

Procedurally, the moving party bears "the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which show lack of a genuine issue." *Hartnagel,* 953 F.2d at 394 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the moving party has successfully carried its burden under Rule 56(c), the nonmoving party has an affirmative burden to go beyond the pleadings and by depositions, affidavits or otherwise, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The nonmoving party must offer proof "such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

B. Standard of Review for ERISA Claims

"ERISA provides a plan beneficiary with the right to judicial review of a benefits determination." *Shelton v. ContiGroup Cos., Inc.*, 285 F.3d 640, 642-43 (8th Cir. 2002) (quoting *Woo v. Deluxe Corp.*, 144 F.3d 1157, 1160 (8th Cir. 1998)). A district court must review a denial of benefits challenged under ERISA section 1132(a)(1)(B) under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary

authority to determine eligibility for benefits or to construe the terms of the plan. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111 (1989). When a plan gives the administrator "discretionary authority to determine eligibility for benefits," the court must review the administrator's decision for an abuse of discretion. *Id.* at 115. "This deferential standard reflects [the court's] general hesitancy to interfere with the administration of a benefits plan." *Layes v. Mead Corp.*, 132 F.3d 1246, 1250 (8th Cir. 1998) (citing *Cox v. Mid-America Dairymen*, 13 F.3d 272, 274 (8th Cir. 1993)).

Seitz points out the court may be required to employ de novo review of an administrator's denial of benefits even if discretion is granted to the administrator:

> When a plan administrator denies a participant's initial application for benefits and the review panel fails to act on the participant's properly filed appeal, the administrator's decision is subject to judicial review, and the standard of review will be de novo rather than for abuse of discretion if the review panel's inaction raises serious doubts about the administrator's decision.

Seman v. FMC Corp. Retirement Plan For Hourly Employees, 334 F.3d 728, 733 (8th Cir. 2003). Seitz argues MetLife never rendered a decision regarding his appeal and therefore the court should employ de novo review pursuant to *Seman*. However, in this case, MetLife did act on Seitz's appeal. Therefore, the court finds *Seman* inapplicable to the current case.

Seitz also maintains the court should employ de novo review because the decision on appeal was untimely made. MetLife contends the time in which it had to rule on Seitz's appeal was tolled because of late medical evidence offered by Seitz. Therefore, MetLife avers its decision was timely and, because it did act on Seitz's appeal and the Plan gives MetLife discretion, abuse of discretion is the appropriate standard of review for Seitz's ERISA claim.

In this case, Seitz applied for LTD benefits on May 29, 2002. MetLife denied Seitz's application on August 8, 2002. Seitz submitted medical evidence in support of an appeal on August 28, 2002, although Seitz's appeal was not filed until October 3, 2002. On November 7, 2002, Seitz submitted additional medical evidence in support of his appeal. MetLife rendered a decision on the appeal February 6, 2003, choosing to uphold its initial denial of Seitz's claim for LTD benefits.

The SPD requires a decision to be made within 45 days of submission of the appeal unless circumstances arise in which additional time is needed.[16] J.A. p. 25. If additional time is needed, the SPD allows the administrator a 45-day extension. J.A. p. 25. Similarly, the Code of Federal Regulations mandates a disability benefits appeal decision be rendered within a reasonable period of time, but not later than 45 days after receiving the claimant's appeal of the initial decision. 29 C.F.R. § 2560.503-1(i)(3). There is an exception to the 45-day requirement: if the plan administrator determines there exist special circumstances which mandate an extension of time for processing the claim, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 45-day period. 29 C.F.R. § 2560.503-1(i)(1)(i), (i)(3). The written notice must set forth the special circumstances requiring an extension of time and the date by which the administrator expects to render the determination on review. 29 C.F.R. § 2560.503-1(i)(1)(i), (i)(3). When calculating the time period,

> the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the

[16] Seitz only complains the appeal decision was untimely. Therefore, the court will not address the timeliness of MetLife's initial denial of Seitz's claim.

> filing. In the event that a period of time is extended as permitted pursuant to paragraph . . . (i)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

Id. at § 2560.503-1(i)(4). There is no evidence the extension of time resulted from Seitz's failure to submit necessary information. Furthermore, there is no evidence Seitz submitted the additional documentation in response to any notification from MetLife of the extension and request for addition information to Seitz. In light of this fact, the court will construe the lack of evidence in Seitz's favor and assume the procedural irregularity existed for purpose of ruling on these summary judgment motions.

The Eighth Circuit Court of Appeals has recognized, however, "only when such [procedural] irregularities are 'so egregious that the court has a total lack of faith in the integrity of the decision making process' [may the court] infer the plan administrator did not exercise proper judgment." *Tillery v. Hoffman Enclosures, Inc.*, 280 F.3d 1192, 1199 (8th Cir. 2002). In *Tillery*, the administrator received the claim on or about August 21, 1995. *Id.* at 1196. There was no evidence the claimant received notice of the denial until May 19, 1997, nearly 21 months after the claim was submitted. *Id.* The Eighth Circuit Court of Appeals found the ERISA benefits claimant "fail[ed] to offer any analysis explaining how the untimely notice so infected the decision making process as to render the decision to deny suspect." *Id.* at 1199. Rather, the Eighth Circuit Court of Appeals found the opposite: when the appeal was received, it was assigned for review and investigation, the investigator actively researched the issue and asked a physician to conduct an independent medical examination, and then the claim was denied. *Id.*

Ultimately, the Eighth Circuit Court of Appeals determined, based on the administrator's investigation and the language of the plan, the "procedural irregularity did not so undermine the decision of the plan administrator as to render it suspect." *Id.*

Likewise, in this case, Seitz has failed to show MetLife's untimely notice[17] so infected the decision making process as to render the decision to deny suspect. During the time between October 3, 2002, when Seitz filed his appeal, and February 6, 2003, when MetLife upheld its initial decision to deny LTD benefits, MetLife actively reviewed the medical records Seitz submitted and asked two physicians to conduct independent medical examinations of Seitz. The ruling on appeal is thorough and sets forth all of the evidence MetLife considered in rendering its decision. Because MetLife's untimely notice does not so infect the decision making process as to render the decision to deny benefits suspect, the court finds de novo review on that basis is inappropriate.

In this case, it is clear MetLife, as Merck's Named ERISA Claim Review Fiduciary, has discretionary authority to determine eligibility for benefits and to construe the terms of the Plan. *See* J.A. p. 15. Therefore, the court must review MetLife's decision to deny Seitz's request for LTD benefits only for abuse of discretion. *See Firestone Tire & Rubber Co.*, 489 U.S. at 115. In applying the abuse of discretion standard, the district court must affirm MetLife's decision if a "reasonable person *could* have reached a similar decision, given the evidence before him, not that a reasonable person *would* have reached the same decision." *Smith v. UNUM Life Ins. Co. of America*, 305 F.3d 789, 794 (8th Cir. 2002) (emphasis in original) (quoting *Ferrari v. Teachers Ins. & Annuity Ass'n*, 278 F.3d 801, 807 (8th Cir. 2002)). A plan administrator

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[17] MetLife was required to notify Seitz of its appeal decision on or before November 17, 2002, 45 days after October 3, 2002, the date the appeal was submitted to MetLife. Therefore, MetLife's decision was approximately two and one-half months late.

has made a reasonable decision where such decision is one that is based on substantial evidence that actually was before the administrator. *Donoho v. FMC Corp.*, 74 F.3d 894, 899 (8th Cir. 1996). Substantial evidence is "more than a scintilla but less than a preponderance." *Schatz v. Mutual of Omaha Ins. Co.*, 220 F.3d 944, 949 (8th Cir. 2000). The district court may consider both the quantity and the quality of the evidence before a plan administrator. *Smith*, 305 F.3d at 794.

C. Count 1: Denial of LTD Benefits

Under the terms of the Plan, MetLife was obligated to provide Seitz with LTD benefits if all of the following circumstances were present: (1) Seitz was unable to perform all material aspects of his occupation for the 26-week eligibility period between January 29, 2002 and July 30, 2002; (2) Seitz was under the regular care of a licensed doctor with appropriate expertise for Seitz's disability and Seitz followed the prescribed course of treatment; and (3) Seitz received no compensation or profit for any work performed for Merck or any other entities except rehabilitative work approved by MetLife. *See* J.A. p. 29. The parties agree Seitz received no compensation or profit for any work between January 29, 2002 and July 30, 2002. Furthermore, the parties do not dispute whether the doctors Seitz met had the appropriate expertise for Seitz's disability or whether Seitz followed the prescribed course of treatment. Instead, the parties' dispute centers on two circumstances: whether Seitz was unable to perform *all* material aspects of his occupation and whether he was under the *regular care* of a licensed doctor.

1. Unable to Perform All Material Aspects of His Occupation

Seitz contends he is entitled to LTD benefits because the medical evidence demonstrates he was unable to perform all material aspects of his occupation between January 29, 2002 and July 30, 2002. MetLife responds Seitz was able to perform some material aspects of his occupation during the relevant time period and, therefore, its

decision to deny benefits was not arbitrary and capricious.

The parties do not dispute the Employee's Job Description form Hodge filled out listing the job duties of a senior professional sales representative, the position Seitz held at Merck when he applied for LTD benefits, defines Seitz's occupational requirements.[18] Hodge indicated the job of a senior professional sales representative requires 5-6 hours of sitting per day and 1-2 hours per day of standing, walking, bending over, twisting, reaching above shoulder level, crouching/stooping, kneeling, balancing, and pushing or pulling. Hodge further stated in a normal day, a senior professional sales representative would repetitively use his or her right foot and both hands in driving for 5-6 hours. Hodge indicated a senior professional sales representative would grasp with both hands for 5-6 hours per day, require fine finger dexterity of both hands 1-2 hours per day, and hold the head and neck in a static position, twist the head and neck, and look up and down 1-2 hours per day. Hodge also stated the position requires lifting or carrying up to 10 pounds continually and lifting or carrying 11-50 pounds occasionally. Hodge indicated the job requires continual interpersonal relationships and stressful situations in order to perform the job. In the course of performing the job of a senior professional sales representative, Hodge indicated a person must drive, be exposed to marked changes in temperature or humidity, and perform overtime work on a routine basis. Hodge attached to the form a copy of the Exempt Position Description of a professional representative in field sales, which the court has already set forth at pages 19-20 of this Order.

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[18] The October 3, 2002 letter Seitz's counsel sent to MetLife, appealing MetLife's initial denial of his claim for LTD benefits, references Seitz's occupation as it is defined in the United States Department of Labor's Dictionary of Occupational Titles. However, Seitz has not pursued the issue in the proceedings before this court and instead argues he was "totally disabled," as that term is defined in the Plan, because he was unable to perform all of the job duties listed in the Employee's Job Description.

Seitz presented MetLife with the following evidence presented regarding his (in)ability to perform all material aspects of his occupation:

On April 2, 2001, Dr. Found opined, "return to a very high paced, demanding, competitive situation is not in [Seitz's] best interest either mentally or physically." J.A. p. 99. On May 18, 2001, Dr. Thampy found Seitz was able to understand, carry out, and remember simple instructions, although Seitz was unable to respond appropriately on a sustained basis to co-workers and usual work situations and was unable to deal with changes in a routine work setting. On August 25, 2001, Dr. Sterrett wrote a letter in which he stated Seitz "should not return to work since there is significant travel involved which could aggravate the condition." J.A. p. 96. On September 26, 2001, Dr. Found released Seitz to do light work with the following permanent restrictions: sitting, standing, walking, bending, climbing, crawling, reaching, kneeling, squatting, twisting, pushing/pulling, grasping, and driving occasionally. Furthermore, Dr. Found indicated Seitz was capable of carrying 0-10 pounds two hours per day, lifting 11-25 pounds one hour per day, and lifting and lowering from floor to waist, waist to shoulder, and over the shoulder occasionally. On January 29, 2002, Dr. Found and Mr. Wernimont stated in a letter Seitz can sit for approximately two hours per day, walk for approximately two hours per day, and stand for approximately two hours per day, as long as he is allowed to move, change position and stretch approximately every 30 minutes. J.A. p. 68. Dr. Found and Mr. Wernimont further stated Seitz can lift up to 20 pounds as long as he uses proper form. J.A. p. 68. Dr. Found and Mr. Wernimont opined Seitz can kneel, crawl, climb, balance, reach occasionally and work under specific deadlines up to two hours per day. J.A. p. 68. Dr. Found and Mr. Wernimont averred Seitz cannot do any overhead lifting. J.A. p. 68. Dr. Found and Mr. Wernimont also indicated, "[w]e continue to feel that his plan to move on to a different job situation that involves much less prolonged sitting,

driving and significant stress is absolutely in Mr. Seitz' best interest." J.A. p. 69. On May 24, 2002, Hodge filled out an Employer Statement in which he indicated Seitz's job could be modified to accommodate Seitz's restrictions by being part-time and/or being part of a job share program. On May 29, 2002, Seitz submitted a Personal Profile statement in which he indicated he could return to his occupation if he were permitted to sit no more than two hours per day, stand no more than three hours per day, walk intermittently up to three hours per day, and limit driving to one to two hours per day. On July 5, 2002, Dr. Thampy found Seitz was able to understand, carry out, and remember simple instructions and was able to respond appropriately on a sustained basis to supervision and co-workers. However, he found Seitz was unable to respond appropriately on a sustained basis to usual work situations and was unable to deal with changes in a routine work setting. On October 25, 2002, Dr. Blonsky wrote a letter in which he opined, "[t]he issue is not one of Mr. Seitz' employability: the question is his ability to perform 'all material aspects of your occupation.' Mr. Seitz cannot do that." J.A. pp. 151. On January 28, 2003, Dr. Schroeder informed MetLife of his finding that the medical documentation does not support the existence of a severe global objective psychiatric impairment sufficient to preclude Seitz from performing the essential duties of his own occupation as a pharmaceutical sales representative between January 29, 2002 and July 30, 2002. J.A. p. 82. On January 29, 2003, Dr. Lipson indicated Seitz's significant degenerative disc disease and laminectomy changes would be expected to result in at least some degree of instability. Dr. Lipson opined this instability, combined with Seitz's body "habitus, (6'2", 280#)" would be expected to result in some altered bio-mechanics of the spine. J.A. p. 86. This alteration, along with the pain, "could easily be exacerbated by Mr. Seitz's work activities which would result in functional impairment rendering him incapable of performing the essential duties of his job, as described in the Employee's Job Description

form, from 1/29/02 through [7]/30/02." J.A. pp. 86-87.

On February 6, 2003, MetLife informed Seitz of its decision after reviewing all of the relevant documentation. MetLife wrote in pertinent part the following:

> We do not dispute your client's diagnoses or complaints. However, as indicated in the plan, to be considered totally disabled, a claimant must have continuously been *unable to perform all material aspects of his occupation, not necessarily his own job*, for 26 weeks. For your client, this period is from January 29, 2002 through July 30, 2002. Dr. Found repeatedly indicated from January 24, 2002 through the [sic] May 29, 2002 that your client was capable of light work with restrictions, and stated that he could work a total of 8 hours as of the Attending Physician Statement dated May 29, 2002. There is no indication throughout the documentation from Dr. Found that Mr. Seitz was informed to cease working as of January 29, 2002.

J.A. pp. 91-92 (emphasis added).

The court first notes an occupation is broader than a job. The term "occupation," when given its ordinary meaning, relates to a set of required skills rather than to a particular employer. An "occupation" describes "'a position of the same general character as the insured's previous job, requiring similar skills and training, and involving comparable duties.'" *Lasser v. Reliance Standard Life Ins. Co.*, 344 F.3d 381, 386 (3d Cir. 2003) (quoting *Dawes v. First Unum Life Ins. Co.*, 851 F. Supp. 118, 122 (S.D.N.Y. 1994)); *accord Kinstler v. First Reliance Standard Life Ins. Co.*, 181 F.3d 243, 253 (2d Cir. 1999) (quoting *Dawes*, 851 F. Supp. at 122). Such a definition does not focus on the claimant's particular job for a particular employer; neither is it so broad as to mean the principal business of one's life. *See Kinstler*, 181 F.3d at 253 (recognizing the definition of "regular occupation" is narrower than any means for making a living but broader than the insured's particular job). For example, the occupation of pharmaceutical sales

representative includes a wider universe of jobs and job duties than just Seitz's job as a senior professional sales representative for pharmaceuticals at Merck and his duties in that job.

The Plan does not indicate to what source MetLife would look in determining Seitz's occupation (e.g., an employer's job description, a survey of other employers in the same field, or the United States Department of Labor's Dictionary of Occupational Titles). Furthermore, the Plan does not define the term "material aspects" of Seitz's occupation for purposes of determining whether Seitz was capable of performing all of them. Giving the term "material" its normal meaning, the court finds "material" means "significant" or "essential." In other words, a "material aspect" of Seitz's occupation is a duty which Seitz must perform for his occupation. Both parties rely on the Employee's Job Description as an indication of the material aspects of Seitz's occupation.[19] Using the Employee's Job Description as a guide, the court finds Seitz's occupation requires him to sit, repetitively use his right foot and grasp with both hands (driving) for 5-6 hours per day, and it requires Seitz to stand, walk, bend over, twist, reach above shoulder level, crouch or stoop, kneel, balance, push or pull, use fine finger dexterity in both hands, hold his head in a static position, twist his neck, look up, and look down for 1-2 hours per day. Seitz's occupation requires him to lift or carry up to 10 pounds 67-100% of the time and lift or carry 11-50 pounds 1-33% of the time. Seitz must interact with other people and face stressful

[19] The Employee's Job Description form lists the physical functions necessary to perform Seitz's particular job at Merck. The court believes the item in the record which appears to most closely resemble an *occupation* description rather than a *job* description is the Exempt Position Description attached to the Employer Statement. *See* J.A. pp. 132-33. However, the Exempt Position Description does not list the physical functions necessary to carry out the broad occupational duties. Therefore, the court will review the medical evidence as it relates to the physical functions listed in the Employee's Job Description, just as the parties have done in this case.

situations 67-100% of the time. His occupation requires him to drive a car, be exposed to marked changes in temperature or humidity, and work overtime on a routine basis.

Seitz contends MetLife ignored the significant evidence in support of granting LTD benefits presented by doctors, some of whom are experts in their respective fields, in favor of the recommendation of a nurse consultant to deny LTD benefits. Such a decision, Seitz avers, was arbitrary and capricious. MetLife contends the medical evidence does not support a finding of "total disability," as it is defined in the Plan, because several of the doctors indicated Seitz can perform some of the material aspects of his occupation – albeit with restrictions – and Seitz himself admitted he can work eight hours a day with certain restrictions.

The court finds there is substantial evidence in the record to support MetLife's decision Seitz is not totally disabled under the Plan because he is not unable to perform all material aspects of his occupation, as required under the Plan. Dr. Lipson opined Seitz's altered bio-mechanics of the spine and the resulting pain *could* be exacerbated by Seitz's work activities which in turn would result in functional impairment rendering him incapable of performing the essential duties of his job. In other words, Seitz is currently capable of performing the essential duties of his occupation but continuing in his present job could lead to a worsened condition, at which time Seitz would be incapable of performing the material aspects of his occupation. Drs. Found and Lipson released Seitz to do light work and restricted Seitz to only two hours per day each of walking, standing, sitting and driving. Seitz, himself, indicated he could return to his occupation of senior professional sales representative if he were permitted to sit no more than two hours per day, stand no more than three hours per day, walk intermittently for up to three hours per day, and limit driving to one to two hours per day. Dr. Blonsky is the only physician who flatly stated Seitz could not perform all material aspects of his occupation between January

29, 2002 and July 30, 2002. However, the court notes ERISA does not require a plan administrator to accord special weight to the opinions of treating physicians. *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 834 (2003). As such, courts cannot impose on plan administrators a heightened burden of explanation on administrators when they reject a treating physician's opinion. *Id.* In light of all of the other evidence Seitz presented in support of his LTD benefits claim, MetLife's decision to disregard Dr. Blonsky's letter was not unreasonable. The court finds a reasonable person could have concluded, as MetLife did, that Seitz was not unable to perform all material aspects of his occupation between January 29, 2002 and July 30, 2002.

2. Under the Regular Care of a Licensed Doctor

MetLife argues Seitz also failed to demonstrate he was under the regular care of a licensed doctor between January 29, 2002 and July 30, 2002, as required by the terms of the Plan, so he was not entitled to LTD benefits. Seitz responds his condition does not merit regular doctor visits, so he should not be required to see a doctor on a regular basis for no purpose other than to satisfy the terms of the Plan. Seitz asks the court to ignore this clause in the contract in determining whether MetLife's decision to deny his LTD benefits claim was arbitrary and capricious.

In its February 6, 2003 denial of LTD benefits, MetLife determined, "according to the plan, [Seitz] was not under appropriate doctor's regular care and attendance with regard to his reported psychiatric condition." J.A. pp. 91-92. Seitz listed Dr. Thampy as his provider for treatment of "depression" or "psychiatry" on the LTD benefits claim form. Dr. Thampy's records indicate he saw Seitz approximately once per month between February 26, 2001 and October 30, 2001. Dr. Thampy later completed a depression questionnaire in connection with Seitz's claims for Social Security benefits on July 5, 2002. No records indicate Dr. Thampy met with Seitz at any time between October 30,

2001 and July 5, 2002. The court finds a reasonable person could have concluded, as MetLife did, that Seitz was not under the regular care of a licensed doctor with regard to his reported psychiatric condition between January 29, 2002 and July 30, 2002.

MetLife also contends Seitz was not under the regular care of a licensed doctor for his back problems during the eligibility period. MetLife had before it the following evidence regarding whether Seitz was under the regular care of a licensed doctor for his back problems:

Seitz listed Dr. Found as his "spine" or "orthopedic" physician provider on his LTD benefits claim form. On April 2, 2001, Dr. Found indicated he planned to "follow Mr. Seitz on a regular basis" and Dr. Found was "going to schedule a twelve month return, but . . . would be happy to see him at any time at his request." J.A. p. 99. On January 31, 2002, Dr. Found stated in his notes, "[w]e would not intervene in any active way at the present time in terms of his medical care and we will see him back as we need to." J.A. p. 66. According to Seitz's medical records, he saw the other doctors who submitted reports in support of his application for LTD benefits only once or a very few times.

There is evidence Seitz was under Dr. Found's regular care between April 2, 2001 and January 31, 2002. However, the eligibility period ran from January 29, 2002 through July 30, 2002. There is no evidence Seitz was under Dr. Found's regular care during that time. In fact, Dr. Found's notes indicate the opposite: Seitz would not be under his regular care beginning January 31, 2002. There is substantial evidence in the record to support MetLife's conclusion Seitz was not under the regular care of a licensed doctor for his back problems. The court finds a reasonable person could have concluded, as MetLife did, that Seitz was not under the regular care of a licensed doctor with regard to his back problems between January 29, 2002 and July 30, 2002.

However, the court finds the fact Seitz was not under the regular care of a licensed doctor does not necessarily mean Seitz was not entitled to receive LTD benefits. The Eighth Circuit Court of Appeals has recognized a term in an ERISA benefits plan which requires regular doctor's care will not be enforced where "there is no evidence 'that additional doctor visits would have influenced the progression of [the claimant's] disability.'" *Walke v. Group Long Term Disability Ins.*, 256 F.3d 835, 841 (8th Cir. 2001) (quoting *Rowan v. Unum Life Ins. Co. of Am.*, 119 F.3d 433, 437 (6th Cir. 1997)). The court finds the evidence Seitz presented in support of his LTD benefits claim demonstrates additional doctor's visits would not have improved his condition or progressed his disability. Therefore, the court will not enforce the Plan's terms requiring a claimant to be under the regular care of a licensed doctor in order to be considered totally disabled.

3. Ruling

The court finds MetLife's decision to deny Seitz's LTD benefits claim, based on Seitz's ability to perform some material aspects of his occupation, was not arbitrary and capricious. There is substantial evidence in the record to support MetLife's decision. As such, the court finds a reasonable person could have reached the same decision (to deny Seitz's LTD benefits claim) as MetLife based upon the evidence before it. The court finds MetLife did not abuse its discretion in denying Seitz's request for LTD benefits. The court finds there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law with regard to Seitz's LTD benefits claim in Count 1 of the Second Amended Complaint.

D. Count 2: Breach of Fiduciary Duty

Seitz alleges in his Second Amended Complaint that Defendants failed to perform their fiduciary duties imposed pursuant to ERISA to promptly adjudicate his claim, to

accord him a full and fair review, and fulfill their general fiduciary duties.

ERISA defines "fiduciary" in the following manner:

> Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title.

29 U.S.C. § 1002(21)(A). The cross-referenced section provides, "[t]he instrument under which a plan is maintained may expressly provide for procedures . . . for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan. *Id.* at § 1105(c)(1)(B). ERISA imposes upon such fiduciaries a duty to "discharge [one's] duties with respect to a plan solely in the interest of the participants and beneficiaries and – (A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan. . . ." 29 U.S.C. § 1104(a)(1). ERISA provides a cause of action for "a participant, beneficiary or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." 29 U.S.C. § 1132(a)(3).

In order for Seitz to recover against Defendants for breach of fiduciary duty, he must prove each of the following elements:

(1) Defendants owed a fiduciary duty to Seitz;

(2) Defendants breached their fiduciary duty;
(3) the breach of fiduciary duty was a proximate cause of damage to Seitz; and
(4) the amount of damages incurred.

See Asa-Brandt, Inc. v. ADM Investor Services, Inc., 344 F.3d 738, 744 (8th Cir. 2003) (setting forth the elements employed by trial court regarding claim for breach of fiduciary duty). Seitz contends the fiduciary duties Defendants owed to him and subsequently breached are: (1) to not unreasonably deny benefits; (2) to perform a full and fair review of Seitz's claim; and (3) to promptly adjudicate Seitz's claim.

1. Duty to Not Unreasonably Deny Benefits

Seitz contends Defendants breached their fiduciary duty to not unreasonably deny benefits. Specifically, Seitz alleges he submitted uncontested medical and opinion evidence that he was unable to perform his occupational duties and MetLife intentionally overlooked any evidence that supported his LTD benefits claim. Seitz further maintains MetLife undertook a selective review of the evidence Seitz presented in support of his LTD benefits claim. Seitz points out that when MetLife requested an independent medical review, it prepared a summary of Seitz's claim which stated, "[d]espite the fact that claimant has had consistent complaints, and Physicians have indicated work restrictions, there is no indication on file that claimant was unable to perform the material duties of his own occupation, not necessarily his own job." Seitz asserts that such summary was intended to achieve the desired result of claim denial.

Defendants argue there is substantial evidence in the record to support MetLife's denial of Seitz's claim for LTD benefits. Specifically, Defendants contend there is no question Seitz was not under the regular care of a physician for his ailments, a necessary prerequisite to granting disability benefits. Furthermore, Defendants maintain Seitz was able to perform some material aspects of his occupation; to be totally disabled under the

terms of the Plan, Seitz must have been unable to perform all material aspects of his occupation. Finally, Defendants aver MetLife did not ignore the medical evidence and records provided in support of Seitz's LTD benefits claim. Rather, Defendants urge MetLife reviewed all of the records and determined the medical evidence did not support a finding of "total disability," as that term is defined in the Plan.

The court has already determined MetLife's denial of benefits was reasonable and MetLife did not abuse its discretion in denying Seitz's LTD benefits claim. Therefore, the court finds as a matter of law, Defendants did not breach the fiduciary duty to not unreasonably deny benefits. Because Seitz has failed to prove an essential element of his claim, the court finds Defendants are entitled to summary judgment on this claim.

2. Duty to Perform a Full and Fair Review

Seitz argues Defendants breached their fiduciary duty to perform a full and fair review as provided by ERISA. Specifically, Seitz contends ERISA requires that specific reasons for the denial of benefits be communicated to the claimant and the claimant be afforded an opportunity for full and fair review by the administrator. Seitz urges MetLife provided no explanation as to why it refused to credit the uncontested opinion of Dr. Found supporting Seitz's disability and instead simply concluded that the medical evidence did not support an impairment of such severity as to render Seitz totally disabled.

Defendants posit the record demonstrates MetLife gave a full and fair review of all the information submitted. Specifically, Defendants contend the denial letters fully comply with ERISA's codified rules regarding the content of a denial of benefits by providing the reason for the denial, citing relevant portions of the Plan, describing the material relied upon to make a determination, and outlining the appropriate steps for a claim review or appeal.

"Full and fair review includes the right to review all documents, records, and other

information relevant to the claimant's claim for benefits, and the right to an appeal that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim." *Abram v. Cargill, Inc.*, 395 F.3d 882, 886 (8th Cir. 2005). "'[T]he persistent core requirements' of full and fair review include 'knowing what evidence the decision-maker relied upon, having an opportunity to address the accuracy and reliability of that evidence, and having the decision-maker consider the evidence presented by both parties prior to reaching and rendering his decision.'" *Id.* (quoting *Grossmuller v. Int'l Union, UAW*, 715 F.2d 853, 858 n.5 (3d Cir. 1983)). The Eighth Circuit Court of Appeals has opined, "ERISA and its accompanying regulations essentially call for a 'meaningful dialogue between the plan administrators and their beneficiaries.'" *Id.* (quoting *Booton v. Lockheed Med. Benefit Plan*, 110 F.3d 1461, 1463 (9th Cir. 1997)). A review is not full and fair if it does not provide for such dialogue. *Id.*; *see also Marolt v. Alliant Techsystems, Inc.*, 146 F.3d 617, 620 (8th Cir. 1998) (determining ERISA claimants are entitled to "timely and specific" explanations of any denial of benefits and are not to be "sandbagged" by later justifications of the decisions).

After reviewing the record, the court finds MetLife's letters denying Seitz's LTD benefits claim and appeal demonstrate MetLife performed a full and fair review of the evidence as required by ERISA. MetLife's two-page initial denial letter of August 8, 2002 (1) reviews the relevant portions of the Plan; (2) restates Seitz's reason for requesting LTD benefits; (3) lists and describes the medical documentation and other information used to make its determination; (4) indicates the reason for denial as lack of sufficient medical evidence; and (5) apprises Seitz of his right to administratively appeal the decision and his options in the event MetLife denies his claim on appeal. MetLife's four-page appeal denial letter of February 6, 2003 is even more thorough. The February 6, 2003 letter (1) reviews the relevant portions of the Plan; (2) lists and extensively details the medical

documentation and other information Seitz supplied to MetLife for its determination; (3) points out MetLife asked for and received two independent medical examinations; (4) reviews the results of the independent medical examinations; (5) indicates the reason for denial of Seitz's LTD benefits claim; (6) distinguishes the right to benefits under Social Security in response to counsel's question raised on appeal regarding MetLife's willingness to hire counsel to represent Seitz in his effort to obtain Social Security disability benefits but MetLife's unwillingness to grant ERISA disability benefits; and (7) apprises Seitz of his right to file a civil action under Section 502(a) of ERISA.

It is clear MetLife provided a full and fair review of the evidence at both the initial review stage and the administrative review stage. Seitz knew what evidence MetLife relied upon at each stage, he had an opportunity to address the accuracy and reliability of that evidence, and MetLife considered the evidence presented by Seitz prior to reaching and rendering his decision. *See Abram*, 395 F.3d at 886 (quoting *Grossmuller*, 715 F.2d at 858 n.5). Therefore, the court finds as a matter of law, Defendants did not breach their fiduciary duty to provide a full and fair review. Because Seitz has failed to prove an essential element of his claim, the court finds Defendants are entitled to summary judgment on this claim.

3. Duty to Promptly Adjudicate Seitz's Claim

Seitz contends Defendants breached their fiduciary duty to promptly adjudicate his claim on appeal. Specifically, Seitz maintains the decision on appeal was untimely under the relevant regulations promulgated pursuant to ERISA. MetLife contends the time in which it had to rule on Seitz's appeal was tolled because of late medical evidence offered by Seitz. Therefore, MetLife avers its decision was timely.

As previously noted, Seitz applied for LTD benefits on May 29, 2002. MetLife denied Seitz's application on August 8, 2002. Seitz submitted medical evidence in support

of an appeal on August 28, 2002, although Seitz's appeal was not filed until October 3, 2002. On November 7, 2002, Seitz submitted additional medical evidence in support of his appeal. MetLife rendered a decision on the appeal February 6, 2003, choosing to uphold its initial denial of Seitz's claim for LTD benefits.

The SPD requires a decision to be made within 45 days of submission of the appeal unless circumstances arise in which additional time is needed.[20] If additional time is needed, the SPD allows the administrator a 45-day extension. Similarly, the Code of Federal Regulations mandates a disability benefits appeal decision be rendered within a reasonable period of time, but not later than 45 days after receiving the claimant's appeal of the initial decision. 29 C.F.R. § 2560.503-1(i)(3). When calculating the time period, the period of time within which a benefit determination on review is required to be made begins the day the appeal is filed, regardless of whether all necessary documentation accompanies the appeal. *Id.* at § 2560.503-1(i)(4). The time period is tolled between the date the administrator notifies the claimant of any additional necessary documentation and the date the claimant responds to the request for additional information. *Id.* There is no evidence the extension of time resulted from Seitz's failure to submit necessary information. Furthermore, there is no evidence Seitz submitted the additional documentation in response to any notification from MetLife of the extension and request for addition information to Seitz. Therefore, Defendants owed to Seitz a duty to inform him of MetLife's decision on appeal on or before November 17, 2002, which Defendants failed to do.

However, Seitz also bears the burden of proving he incurred damages and those damages were proximately caused by Defendants' breach. In this case, Seitz has failed to

[20] Seitz only complains the appeal decision was untimely. Therefore, the court will not address the timeliness of MetLife's initial denial of Seitz's claim.

demonstrate he incurred any damages. Seitz was not damaged by Defendants' untimely decision because the ultimate determination was to deny benefits and such determination was not unreasonable. Therefore, Seitz has not demonstrated he lost anything he would have had if Defendants timely had denied Seitz's claim for benefits. Because Seitz has failed to prove an essential element of his claim, the court finds Defendants are entitled to summary judgment on this claim.

4. Ruling

The court finds summary judgment is appropriate. Defendants have demonstrated there is no genuine issue for trial, which Seitz has failed to rebut. Therefore, as a matter of law, Defendants are not subject to liability to Seitz on the theory of breach of fiduciary duty alleged in Count 2 of the Second Amended Complaint.

IV. CONCLUSION

In light of the foregoing, **IT IS HEREBY ORDERED**:

(1) Defendants' Motion for Summary Judgment (docket no. 36) is GRANTED.

(2) Plaintiff's Motion for Summary Judgment (docket no. 38) is DENIED.

(3) Plaintiff's Complaint is **DISMISSED** with prejudice.

(4) The Clerk of Court shall enter judgment accordingly and shall assess all court costs against Plaintiff.

SO ORDERED.

DATED this 30th day of March, 2005.

LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA